

REMARKS

This responds to the Office Action mailed on June 4, 2004.

Claims 1, 2, 7, 9, 15, 17 and 20 are amended. No claims are canceled or are added.

Claims 1–22 remain pending in this application.

Objections to the Specification

The specification was objected to¹ because it did not include a 'Brief Summary of the Invention' section.

The Examiner objected to the specification as not including a "Summary of the Invention" section and required Applicant to amend the patent application to include such a section. Applicant hereby respectfully traverses the objection and kindly points out to the Examiner that a "Summary of the Invention" section is optional since neither the rules nor the patent statute requires a patent applicant to provide such summary. As discussed in 37 CFR 1.73:

A brief summary of the invention indicating its nature and substance, which may include a statement of the object of the invention, *should* precede the detailed description. Such summary should, *when set forth*, be commensurate with the invention as claimed and any object recited should be that of the invention as claimed [emphasis added]. 37 CFR 1.73.

Thus, Applicant respectfully points out that the use of the word "should" and the phrase "when set forth" indicates that inclusion of a "Summary of the Invention" section is optional rather than mandatory. As a result, it is believed there is no legal basis upon which to require a patent applicant to provide a "Summary of the Invention" section in a patent application or to require an applicant to amend the patent application to include such a summary. Therefore, the objection and any requirement related thereto should be withdrawn.

The specification was also objected to² at page 10, line 19. The specification has been amended to change "the variable credits" to "the variable available credits".

The specification was also objected to³ at page 10, lines 22-23, for being unclear due to grammatical errors. The specification has been amended to correct these errors.

¹ Office Action Paragraph 6a, at page 2.

² Office Action Paragraph 6b, at page 2.

The specification was also objected to⁴ at page 11, lines 19-21. The specification has been amended as the Examiner suggested.

Numerous amendments to the specification have been made for clarity and to correct grammatical errors. No new matter has been added by way of these amendments.

Claim Objections

Claim 1 was objected to⁵ due to informalities. Applicant has amended the claim to correct it in accordance with the Examiner's comments.

Claims 2 and 7 were objected⁶ to due to informalities. Applicant has reviewed the claims, which are both directly dependent from claim 1. Claim 1 does not recite and "available credits variable." The fact that the "available credits variable" is defined slightly differently in the two different claims does not appear to Applicant to be objectionable. The objection is respectfully traversed.

Claim 7 was objected to⁷ due to informalities. Claim 7 has been amended to change "and available credits" to "an available credits". A similar correction has been made to Claim 15.

Claim 9 was objected to⁸ due to informalities. Claim 9 has been amended to complete the preamble.

Claim 17 was objected to⁹ due to informalities. Claim 17 has been amended to change "all message" to "all messages".

Claim 20 was objected¹⁰ to due to informalities. Claim 20 has been amended to change "when no further credits remaining" to "when no further credits remain".

³ Office Action Paragraph 6c, page 2.

⁴ Office Action Paragraph 6d, page 2

⁵ Office Action paragraph 7, page 3

⁶ Office Action paragraph 8, page 3

⁷ Office Action paragraph 9, page 3

⁸ Office Action paragraph 10, page 4

⁹ Office Action paragraph 11, page 4

¹⁰ Office Action paragraph 12, page 4

§102 Rejection of the Claims

Claims 1-3, 6-11, 14-19, 21 and 22 were rejected under 35 USC § 102(b) as being anticipated by Kung et al. "Credit-Based Flow Control for ATM Networks: Credit update protocol, Adaptive credit allocation, and Statistical multiplexing", SIGCOMM, 1994. The rejection is respectfully traversed for the exemplary reasons set forth more fully below, among others.

The Kung et al article generally relates to the "absolute credit" methods, discussed in the Background section of the present application (see the paragraphs beginning at page 1, line 20, and page 2, line 10), for assuring that a receiver has the capacity to receive an entire message to be sent to it. The Office Action fails to set forth a proper anticipation rejection¹¹ since Kung et al does not show each and every element of the rejected claims, arranged as in the claims.

Claim 1 calls for "transmitting a flow control message header" from the receiving node to the transmitting node. More specifically, it calls for a flow control header that "comprises a message sent field and a message limit field." Applicant is unable to find in Kung any mention of a "message limit field." Accordingly, Kung does not show each and every element of claim 1. Claims 2 and 3 and 6-8, since they are dependent upon claim 1, are also distinguished from Kung for the same reasons as claim 1.

Apparatus claim 9 has a flow control header element with a "method limit field" as claimed in claim 1 so that the rejection of it based upon Kung is also defective for the same reasons stated for claim 1. Claims 10, 11, 14-16 depend from claim 9.

Claim 17 is a claim drawn to a system which also includes a "message limit field" similar to the one claimed in claim 1. Since Kung does not have such a field, the rejection of claim 17 is defective for the same reasons as previously stated for claim 1. Claims 18, 19, 21 and 22 are all dependent from claim 17 and distinguishable from Kung for the same reasons.

For the reasons stated above and additional reasons, claims 1-3, 6-11, 14-19, 21 and 22 are patentable over Kung. Reconsideration and allowance are respectfully requested.

¹¹ See the requirements for proving anticipation set forth in *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

§103 Rejection of the Claims

Claims 4, 5, 12, 13 and 20 were rejected under 35 USC § 103(a) as being unpatentable over Kung in view of Massa et al. (U.S. 6,658,469). The rejection of claims 4, 5, 12, 13 and 20 is respectfully traversed for the reasons stated below and other reasons.

The Office Action fails to state a proper obviousness rejection because it did not meet the requirements summarized in §2142 of the MPEP¹². The Office Action does not attempt to show a motivation or reason to combine the two cited documents. Nor does it purport to show evidence that there would be an expectation of success if they were combined as the Office Action proposes. Finally, the Office Action fails to show that the proposed combination of documents shows each element of the rejected claims.

Even if one were to combine the cited Kung and Muller documents as suggested in the Office Action, all of the elements of the claims would not be found in the proposed combination. Each of claims 4, 5, 12, 13 and 20 is dependent from one of claims 1, 9 or 17. As shown in the preceding section, the Kung article does not show each and every element of those claims, arranged as in the claims.

In the preceding section Applicant showed that Muller et al does not have the “flow control header” with the “message limit field” as claimed. Since the Office Action does not suggest that the missing “message limit field” is shown in Muller, it follows that the proposed combination of the two publications does not meet each element of the claims.

Reconsideration and allowance of claims 4, 5, 12, 13 and 20 is respectfully requested.

¹² In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 09/749,384

Filing Date: December 28, 2000

Title: SYSTEM AND METHOD FOR COMMUNICATIONS MANAGEMENT AND CONTROL OVER AN UNRELIABLE COMMUNICATIONS NETWORK

Assignee: Intel Corporation

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Dkt: 884.972US1 (INTEL)

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney ((612) 373-6970) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

ARLIN R. DAVIS ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
Attorneys for Intel Corporation
P.O. Box 2938
Minneapolis, Minnesota 55402
(612) 373-6970

Date

October 4, 2004

By

Charles E. Steffey

Charles E. Steffey
Reg. No. 25,179

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 4th day of October, 2004.

Name

KACIA LEE

Signature

Kacia Lee